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BOSNIA AND HERZEGOVINA

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Introduction

1. Until April 1992, the Republic of Bosnia and Herzegovina was part of the Socialist Federal Republic of Yugoslavia (SFRY). The Socialist Federal Republic of Yugoslavia consisted of six Republics and two Autonomous Regions, whose constitutional status was determined by the SFRY Constitution of 1974 and the constitution of each Republic and Autonomous Region. During 1990 and 1991 the process of dissolution of the former SFRY started. First the Republic of Slovenia and then the Republic of Macedonia, then the Republic of Croatia, gained independence from the former SFRY.

2. In a referendum held in the Republic of Bosnia and Herzegovina on 29 February 1992 and on 1 March 1992, 64.31 per cent of the population voted for independence and sovereignty, and 1 March 1992 is taken as the day when the Republic of Bosnia and Herzegovina won independence, although international recognition of the Republic of Bosnia and Herzegovina by the United States of America and the European Community countries and other States followed in the period after 6 April 1992.

3. Simultaneous with the activities in favour of the independence of the Republic of Bosnia and Herzegovina and its international recognition was the aggression of the so-called Federal Republic of Yugoslavia (FRY) led by the Yugoslav People's Army and part of the Serb population on the territory of Bosnia and Herzegovina against the Republic of Bosnia and Herzegovina. The aggression against the Republic of Bosnia and Herzegovina and its citizens, particularly the Bosniaks and Croats, has not been recorded in the history of mankind to date. By its cruelty and the actions against the civilian population, especially women, children, the old and the sick, particularly in urban areas like Sarajevo, Mostar, Tuzla, Srebrenica and Žepa, the aggression can rightly be called the most disastrous, the most inhumane and the most genocidal war after the Second World War.

4. From the very moment it was internationally recognized, the Republic of Bosnia and Herzegovina and its population were obliged to direct all their forces towards the defence of the Republic's survival, i.e. towards protection against the physical destruction of the population, particularly of the Bosniak population which was facing the aggressor's policy of genocide directed at the extermination of the people who had lived in those territories for centuries.

5. The Republic of Bosnia and Herzegovina should have submitted this report in accordance with the provisions of article 40 of the International Covenant on Civil and Political Rights as far back as April 1993, but it is only now that conditions to prepare and submit it have existed.

I. LAND AND PEOPLE

6. The Republic of Bosnia and Herzegovina has an area of 51,129 km^2. The capital of the Republic is Sarajevo which, according to the 1991 data, had a population of 600,000. Other bigger cities in the Republic are Banja Luka, Mostar, Zenica, Tuzla and Bihac.

7. According to the last census, taken in 1991, the Republic of Bosnia and Herzegovina had 4,377,033 inhabitants, with the following ethnic structure:

Muslims-Bosniaks	1 902 956 or 43.48 per cent
Serbs	1 366 104 or 31.21 per cent
Croats	760 852 or 17.38 per cent
Others	347 121 or 7.93 per cent

According to unofficial data the total population of the whole territory of the Republic of Bosnia and Herzegovina (including refugees) was:

1992 - 4 411 052

1993 - 4 276 624

1994 - 4 217 150

1995 - 4 180 150

We point out that census is conducted every 10 years.

8. The total gross domestic product and gross national product of the Republic of Bosnia and Herzegovina, according to 1991 data was 7,978,992 (in thousands of US dollars) and 6,886,460 (thousands of US dollars respectively). According to incomplete data, GDP in Bosnia and Herzegovina in 1992 was US$ 1,299 million and in 1993, US$ 1,153 million. GDP per capita in 1991 was US$ 1,825, while GNP in the same year was US$ 1,575. The rate of inflation in 1991 was 214 per cent. GDP per capita in 1992 was US$ 294, while in 1993 it was US$ 270.

9. The foreign debt of Bosnia and Herzegovina, according to data issued by the National Bank of Bosnia and Herzegovina in 1991, was US$ 2,049 million, of which US$ 1,806 million were medium-term, long-term and short-term loans, while the amount of US$ 244 million were guarantees.

10. The unemployment rate in Bosnia and Herzegovina according to 1991 data, was 31.6 per cent representing the ratio of the number of the persons unemployed to the total number of employed people in that period; the rate of unemployment to the total economically active population between 15 and 65 years of age was 10.4 per cent. The current rate of unemployment as a result of the aggression launched against Bosnia and Herzegovina is about 80.2 per cent.

11. As for religion, of the total population, which was 4,377,033 according to 1991 data, there were 1,872,422 (42.78 per cent) followers of Islam, 1,317,379 (31.10 per cent) followers of the Orthodox religion, 772,392 (17.65 per cent) followers of Catholicism, 4,644 (0.10 per cent) others and 250,913 (5.73 per cent) atheists, while 159,283 (3.64 per cent) did not answer that question.

12. Concerning the mother tongue, of the total population according to the 1991 data, 1,641,990 (37.1 per cent) answered that they spoke Bosnian as their mother tongue, 1,165,129 (26.62 per cent) said they spoke Serbo-Croat, 824,877 (18.85 per cent), said they spoke Serbian, 593,703 (13.56 per cent) spoke Croatian, 61,597 people (1.41 per cent) said they spoke Croato-Serbian, while the rest did not specify their mother tongue.

13. We emphasize that according to the provisions of the Constitution which was in force during the census, the official language in Bosnia and Herzegovina was Serbo-Croatian or Croats-Serbian of Ijekavian dialect. After Bosnia and Herzegovina was internationally recognized, the Law on the Name of the Language was passed for official use in the Republic of Bosnia and Herzegovina during the war. According to a provision of that law, in the Republic of Bosnia and Herzegovina the official language is the standard literary language of the Ijekavian dialect of its constituting peoples which is called by one of the three names: Bosnian, Serbian or Croatian; both Latin and Cyrillic scrips are equal.

14. Of total population, 60.2 per cent is rural population while the rest live in towns.

15. The average life span in 1991 for men was 33 and for women 35 years.

16. The literacy rate for those over 10 years old, according to the 1991 census, was 91.75 per cent, 97.10 per cent for men and 86.74 per cent for women.

17. The infant mortality rate (children under 12 months of age) was 14.9 per 1,000 live births. The fertility rate was 59.4 per 1,000.

18. The portion of the population under 15 years of age was 23.47 per cent, 12.03 per cent of whom were men and 11.44 per cent women. According to unofficial data, of total population in mid-1995, 21.73 per cent were 15 or under.

19. The population over 65 years of age was 6.49 per cent, of whom 2.47 per cent were men and 4.02 women. According to unofficial data as of mid-1995, 10.96 per cent of the population was 60 years of age.

II. GENERAL POLITICAL STRUCTURE

20. As stated at the beginning of this report, the Republic of Bosnia and Herzegovina was one of the six Republics constituting the former Socialist Federal Republic of Yugoslavia and it won its independence and sovereignty after the referendum conducted on 29 February and 1 March 1993, when 64.31 per cent of its citizens voted for independence and sovereignty.

21. In the Republics of Bosnia and Herzegovina the Constitution of 1974, which has been amended with a large number of amendments, is still in force. According to the 1974 Constitution, Bosnia and Herzegovina is a united State, a republic by its governmental structure with legislative, executive and judicial branches. It is a sovereign and independent State of equal citizens - Muslims, Bosniaks, Serbs, Croats and others.

22. The Parliament is the highest authority within the framework of the rights and duties of the Republic. It has 240 members and consists of two Chambers - the Chamber of Citizens and the Chamber of Municipalities. The Chamber of Citizens has 130 representatives elected by the citizens on the basis of a general and equal right to vote, by direct and secret elections as determined by law. The Chamber of Municipalities has 110 representatives elected by the citizens of each municipality, by direct and secret elections as determined by law.

23. The Presidency of the Republic of Bosnia and Herzegovina is a collective head of the State consisting of seven members elected directly by the citizens by general and secret vote in accordance with law for a four-year period. In case of a state of war the mandate of the Presidency members is extended until the conditions for the election of new Presidency members are created, so that during the war the Presidency is enlarged by the Chair of the Parliament, the Prime Minister and the Chief of Staff of the Army. As the Republic of Bosnia and Herzegovina has been officially at war since 20 June 1992, currently the Presidency has 10 members.

24. Along with the Parliament and the Presidency, there is the Government of the Republic of Bosnia and Herzegovina. The Prime Minister is elected by the Parliament on the proposal of the Presidency after consultations with the political parties whose candidates were elected as representatives in the Parliament, taking into account the party representation. The candidate for Prime Minister gives a proposal for the Government members and presents his programme to the Parliament. At the proposal of the Prime Minister, the Parliament, by a secret vote, elects the members of the Government. From among the Government members, the Parliament appoints, on the proposal of the Prime Minister, the members who will head particular ministries. The Government is responsible for its work to the Parliament.

25. The territory of the Republic of Bosnia and Herzegovina consists of 110 municipalities, with a number of municipalities in the area of the City of Sarajevo making up a separate territorial unit of the City of Sarajevo.

26. During the state of war, in order to promote better functioning of the legal authorities eight districts were formed as special social and political communities. The setting up of these districts was necessary since, owing to the communication blockade which was the result of the aggression against Bosnia and Herzegovina the bodies of the central Government were not able to perform the tasks under their competence in a timely manner. Some of their duties were therefore transferred to the district organs for the purpose of better organizing the Republic's defence and establishing a relatively normal life for the citizens in those areas.

27. In the municipalities and districts there are also councils consisting of a number of counsellors who were also elected in the first free and democratic elections by the citizens in 1991. The municipal and district assemblies elect the municipal executive board and the district executive board respectively, and the presidents of the municipality (district). Because of the war, war presidencies were established in the municipalities

and districts which carried out the duties of the municipal and district assemblies where the latter could not do so owing to the war or for some other reason, and the situation in the field required urgent and unavoidable measures.

28. The judicial system of the Republic of Bosnia and Herzegovina is made up of lower courts, higher courts and the Supreme Court of Bosnia and Herzegovina as the highest court in the Republic. Parallel with the regular courts during the state of war are also district military courts performing the function of special courts which exist only during the state of war, where the second-instance (higher court) is the Supreme Court.

29. Along with the Republic Public Prosecutor's Office there are also Lower Public Prosecutor's Offices and Higher Public Prosecutor's Offices and District Military Prosecutor's Offices during the state of war who act before the District Military Courts.

30. Along with the courts mentioned, there is also the Constitutional Court of Bosnia and Herzegovina consisting of nine members where it decides on whether a law is in accordance with the Constitution, and also performs other tasks defined by the Constitution.

31. In 1994 began the transformation of the Republic of Bosnia and Herzegovina from a unitary State into a complex State, i.e. the Federation of Bosnia and Herzegovina, composed of a number of cantons as federal units with equal rights and responsibilities. According to the 1994 Constitution of the Federation of Bosnia and Herzegovina, the legislative power of the Federation is conferred on the Parliament of the Federation which consists of two Chambers: the Chamber of Representatives, consisting of 140 representatives, who are elected democratically in direct elections by secret vote in the territory of the whole Federation, and the Chamber of Peoples, consisting of 30 Bosniak delegates and 30 Croat delegates, and other delegates whose number is in the same proportion to 60 as the number of representatives of cantonal legislative bodies who do not declare themselves as Bosniaks or Croats is to the Bosniak and Croat representatives in cantonal legislative bodies.

32. Under the exclusive responsibility of the Federation is a number of issues such as foreign affairs; organizing and leading the defence of the Federation and the protection of its borders; citizenship; economic policy; trade, including customs duties, international trade and finances etc; the majority of other issues is the responsibility of the cantons. The executive branch of the Federation is made up of the President and Vice-President of the Federation and the government of the Federation. The legislative branch of the federation is made up of the courts of the Federation: the Constitutional Court, the Supreme Court and the Court for Human Rights.

33. At the level of the canton there is a legislative body consisting of one Chamber the number of whose members is fixed in proportion to the national structure of the population, but which cannot be smaller than 30 or bigger than 50 representatives. The executive branch in the canton is the President of the canton, and he is elected by the legislative body of the canton. Along with the President there is a government of the canton. The cantons consist of a number of municipalities at the head of which is the President of the

municipality. Local self-rule is exercised within the municipality and each municipality has a Municipal Council, which is a sort of legislative body in the municipality. Legal authority in the cantons is exercised by the municipal courts and cantonal courts.

III. GENERAL LEGAL FRAMEWORK PROTECTING HUMAN RIGHTS

34. Human rights and freedoms in the State of Bosnia and Herzegovina are protected by the Constitution, laws and other regulations passed in accordance with the Constitution and by the assurance of the highest level of internationally recognized rights and freedoms, and their application and respect are ensured by the courts, administrative organs and other institutions exercising public authority.

35. The Constitution of the Republic of Bosnia and Herzegovina, in chapter III, inter alia determines human and civil rights and freedoms in such a way that the rights and freedoms provided by the Constitution cannot be removed or limited. Legal protection is also provided for the rights and freedoms guaranteed by the Constitution.

36. The Constitutional Court of Bosnia and Herzegovina, as the implementing agent of constitutionality, provides for the rule of law in accordance with the Constitution, which means that laws and other regulations and general acts must be in compliance with the Constitution.

37. Human rights and freedoms are dealt with in article II A2-7 of the Constitution of the Federation of Bosnia and Herzegovina. First of all, it must be emphasized that the principles, rights and freedoms determined by the instruments for human rights protection in the annex to this constitution have the legal force of the Constitution and are applied in the whole territory of Bosnia and Herzegovina. Those instruments are:

Convention on the Prevention and Punishment of the Crime of Genocide, 1948;

Universal Declaration of Human Rights, 1948;

Geneva Conventions I-IV on the Protection of War Victims, 1949;

Additional Protocols I and II to the Geneva Conventions, 1977;

Convention relating to the Status of Refugees, 1951, and Additional Protocol 1966;

European Convention on the Protection of Human Rights and Fundamental Freedoms and Additional Protocols, 1950;

Convention on the Nationality of Married Women, 1957;

Convention on the Reduction of Statelessness, 1961;

European Social Charter, 1961 and Additional Protocol 1:

International Convention on the Elimination of All Forms of Racial Discrimination, 1965;

International Covenant on Civil and Political Rights, 1966, and its Optional Protocol, 1989;

International Covenant on Economic, Social and Cultural Rights, 1966;

International Convention on the Elimination of All Forms of Discrimination against Women, 1979;

Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 1981;

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987;

Convention on the Rights of the Child, 1989;

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990;

Copenhagen document of the Organization for Security and Cooperation in Europe, chap. IV, 1990;

Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, 1990;

European Charter for Regional or Minority Languages, 1992.

38. The Federation also ensures the application of internationally recognized rights and freedoms at the highest level, determined by the Acts in the annex to the Constitution. All the persons in the territory of the Federation have the right to life; freedom (imprisonment and detention are allowed only in compliance with the law); equality before the law; protection against any discrimination on the basis of race, sex, language, religion, political or other affiliation, national or social background; fair criminal proceedings; protection against torture, cruel and inhuman treatment and punishment; privacy; freedom of movement; asylum; protection of the family and children; property; fundamental freedoms; the freedom of speech and the press; the freedom of thought, conscience and belief; freedom of religion, including private and public practice of religion; freedom of trade union organization, including by the police; the freedom of association; free choice of labour; free education, social care and health care; food and shelter; minority protection and the protection of potentially vulnerable groups. All citizens have the rights to establish and belong to political parties and political rights, to participate in public affairs, have equal access to public services, the right to vote and be elected. All of these rights are also foreseen by the laws of the Republic of Bosnia and Herzegovina.

39. The Constitution of the Federation of Bosnia and Herzegovina obliges all the courts, administrative organs and institutions exercising public authority to apply and respect all the rights and freedoms anticipated in the above-mentioned Acts in the annex to the Constitution.

40. The issue of human rights protection at the level of the Republic is dealt with intensively by the Commission on Human Rights of the Republic Parliament which, as a permanent parliamentary body, monitors the situation in the field of human rights protection and on that basis proposes to the Parliament and other State institutions activities and measures for the prevention of human rights violations and the promotion of their protection.

41. In the Republic's Presidency, there is also a Commission on the Protection of Human Rights. It deals with individual cases of threatened or actual violations. This Commission records its observations to the appropriate authorities and requests them to eliminate the consequences of human rights violations through the legal procedure.

42. Specific institutions for the protection of human rights at the level of the Federation which have been included in its Constitution are: the Constitutional Court of the Federation, the Court for Human Rights and the institution of the ombudsman.

43. The ombudsmen can investigate the activities of any institution in the Federation, canton or municipality, as well as of any other institution or individual that negated human dignity, rights or freedoms, including the practice of ethnic persecution and its consequences. The ombudsmen have the right to bring charges before the competent courts and intervene in proceedings which are under way, including cases before the court for the protection of human rights. In carrying out their duties, the ombudsmen can inspect/investigate all the official documents, including the secret ones, and court and administration documents and require cooperation from any person, including any official, particularly when collecting the information, documents and papers required. The ombudsmen can attend court and administration proceedings as well as the meetings of other bodies, and can have access to all the places where the persons detained are kept or where they work and he can survey those places. In the Federation there are three ombudsmen and each of them submits an annual report to the Prime Minister and the Vice Prime Minister, to each of the canton presidents and the Conference on Security and Cooperation in Europe, and at any time can submit special reports to the competent federal, cantonal, municipal or international body.

44. The institution of the ombudsman started working early in 1995, and was established primarily with the aim of contributing to the elimination of the consequences of ethnic cleansing, i.e. to the repatriation of the expelled, and to prevent any discrimination on national, religious or any other grounds. That institution has its offices in Sarajevo, Zenica, Tuzla and Mostar, so that its activities cover the whole area of the Federation. The participation and support of the OSCE in the establishment and functioning of this institution is of particular importance. Within the scope of the ombudsmen's activities the most frequent categories of human rights violation relate to the prevention of repatriation of refugees, and Bosniak and Croat tenants' rights (preventing tenants/owners from returning to their temporarily

abandoned flats, looting the flats, etc.), and freedom of movement (a problem particularly present in Sarajevo and Mostar). More and more people are turning to the ombudsmen, which points to the institution as being justified and expected to contribute further to the promotion of human rights.

45. The Court for Human Rights also offers protection in cases when human rights are threatened. This court was conceived according to the model of the European Court of Human Rights. An additional guarantee that this court will exercise legal protection is the fact that during the transition period the majority of judges will be foreigners who will be appointed by the Ministerial Council of the Council of Europe, as well as the fact that the Government will be responsible for the execution of its decisions. This court will be competent to examine final decisions of regular courts at the request of parties in the cases of human rights violations.

46. The Constitutional Court of the Federation has nine members, of whom one third are foreign judges appointed by the President of the International Court of Justice. The task of this court is to check the constitutionality and legality of all regulations and general acts, which prevents the passing of laws that violate human rights and eliminates the consequences of human rights violations by already passed acts, and guarantees the rule of law and thereby the dignity of man and his individual freedoms and rights.

47. There are numerous non-governmental organizations dealing with the protection of human rights. Some of them work in the whole area of the Republic while some work regionally. Among the former are the International Peace Centre in Sarajevo, the Helsinki Parliament of Citizens, the Helsinki Committee for Human Rights, in Sarajevo, the Association of Citizens for UNESCO in Sarajevo and the Independent Union of Professional Journalists in Sarajevo, while among the latter the most significant is the Forum for the Protection of Human Rights in Tuzla.

48. Education in the field of human rights has an important preventive character in the establishment of a democratic society. The mass media (radio and television) give more and more time to informing the public about the instruments of human rights protection. In this respect, school curricula are being adjusted (in primary and secondary schools and at university level), while some NGOs train staff in the field of human rights. Additionally, international legal documents in the area of human rights are being published: to date 21 documents have been published which, along with the Constitution, have become part of domestic law.

49. The law on health care prescribes a number of rights such as the right to urgent medical aid, the right to obligatory forms of health care, the right to primary, secondary and tertiary levels of health care, the right to compensation for salary during temporary inability to work, the right to orthopaedic appliances, the right to spa treatment, the right to medical treatment abroad. It must be pointed out that owing to war destruction and the difficult material position of the health service, the majority of some rights have been limited, including the right to orthopaedic appliances, the right to spa treatment and the right to medical treatment abroad. Exceptionally, the staff of the armed forces and their families are granted full rights to health care.

50. The health care beneficiary who thinks that his legally provided rights to health care in a health institution were violated has the right to appeal to the Ministry of Health. For final protection of his rights, the beneficiary can apply to the competent court, which also includes the right to damage compensation. However, it can be claimed that in the recent war period the health care service was very good and it can be stated that every citizen was provided full health care in accordance with the possibilities of the State in war, so that no major rights violations took place in this field. Isolated cases of the right to health care were remediated in time, so that we can say that there were no violations of the right to health protection. It is essential to point out that in concrete cases it was owing to the impoverishment of the country because of the war that those rights could not be exercised in the way and to the extent guaranteed by the law.

51. In the free territories under the control of the legal authorities, there are no striking cases of violation of the human rights provided under the international instruments, although there were some isolated cases of neglect and violation of legal and other regulations by citizens, members of all nationalities and some officials implementing the law. In this respect, it is important to emphasize that the violations of human rights were not motivated by national, racial or other discrimination. Permanent engagement of the competent bodies contributed to the decrease of such cases, as well as to the increase of the level of protection of the human rights and freedoms of all the citizens irrespective of their national, religious or other affiliation.

52. Provisions of the International Covenant on Civil and Political Rights were incorporated in the legislation of the Republic of Bosnia and Herzegovina and are consistently respected.

53. Under the circumstances described, created by unprecedented aggression against the Republic of Bosnia and Herzegovina, a United Nations Member State, its competent bodies declared a state of war on 20 June 1992 in the whole territory of the Republic, and it is due to this fact that, in accordance with article 4 of the Covenant, some of the rights contained in the Covenant, as well as in the national legislation, were limited. The limitations refer mainly to the freedoms of movement and congregation of citizens and were for the purposes of the defence of the country. Despite such measures, the world public was witness to the aggressor's crimes committed at places of public congregation, such as the massacres at the bread queue in May 1992, at the market in February 1994, and outside the building of Markale and in Tuzla in 1995.

54. In the period since the beginning of the aggression the courts in the Republic of Bosnia and Herzegovina in spite of the mass crimes committed by the aggressor, especially against the Bosniaks have pronounced only two death penalties which went into effect but which have not been executed to date since the procedure for pardon is under way.

55. In the Republic of Bosnia and Herzegovina during the whole period of aggression, there was no establishment of concentration camps, destruction of religious structures, or any other form of revenge. On the other hand, the instances of such behaviour are evident on the aggressor's side where the

provisions of the Covenant and all other principles on which the contemporary international community is based were broken. This is known to the whole world community.

56. The Supreme Court of Bosnia and Herzegovina, as well as all the lower courts in the Republic, throughout the period since independence in April 1992, among other issues have dealt with the rights provided by the Covenant according to which all citizens appearing before the courts are fully equal regardless of race, sex, language, religion, political or other opinions, national or social origins, material standing, birth or any other condition. The Court Councils have been composed of judges from all three peoples, i.e. no court decisions have been made by a one-nation council. All the cases are dealt with in the same way, irrespective of whether it concerns a natural or corporate person and what group the citizen belongs to. In no case have the courts in Bosnia and Herzegovina made any distinction with regard to belonging to any nation, religion, race, sex, language, social origin, material standing, political opinions, birth or any other condition. The principle of law has always been strictly respected.

57. As an example of the work of the courts, we give more detailed information on the work of the District Military Court in Zenica. The majority of the persons, mainly Serbs were tried by this court for the criminal act of serving the enemy army or for illegal possession of arms or explosive substances. According to the court's data, 30 persons of Serb nationality took part in the aforementioned actions, of whom 31 persons were sentenced to up to one year of imprisonment. One hundred and forty-eight persons were sentenced to from one to three years of imprisonment, while 46 persons were sentenced to over three years; for 2 persons sentence was refused and 1 person was acquitted. Before the criminal procedure was carried out, 48 persons were released, while an arrest order was issued for 28 persons. All those persons later were sent for exchange so that by mid-1994 no such person was imprisoned. Similar practice was recorded in other district military courts.

58. In the period since 1992, the courts in the Republic of Bosnia and Herzegovina, including the district military courts, have often been refused permits to visit detainees to enable them to familiarize themselves with conditions.

59. The respective ministries are preparing new laws on work, welfare, children's protection and family relations, and health care which will deal with the problems herein discussed.